

**DRAFT**

**PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

**ENERGY DIVISION**

**Item 31  
Agenda ID # 12150  
RESOLUTION E-4589  
June 27, 2013**

**REDACTED**

**R E S O L U T I O N**

Resolution E-4589. Pacific Gas and Electric Company requests approval of a third amendment to a power purchase agreement between Arlington Wind Project, LLC and PG&E.

**PROPOSED OUTCOME:** This Resolution approves cost recovery for the third amendment to the power purchase agreement between Pacific Gas and Electric Company and Arlington Wind Project, LLC.

**SAFETY CONSIDERATIONS:** The third amendment to the Arlington Wind Power Purchase Agreement is between PG&E and Arlington Wind Project, LLC. Based on the information before us, this PPA does not appear to result in any adverse safety impacts on the facilities or operations of PG&E.

**ESTIMATED COST:** The price approved for the Original Arlington Wind PPA in Resolution E-4204 was a fixed price of \$96.81/MWh plus the costs of firming and shaping services and possible price adjustments, which equated to a maximum PPA price of \$103.31. Costs of the third amendment to the power purchase agreement are confidential at this time.

By Advice Letter 3795-E filed on January 26, 2011.

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**SUMMARY**

**Cost recovery for Pacific Gas and Electric Company's third amendment to the renewable energy power purchase agreement with Arlington Wind Project, LLC is approved without modifications.**

Pacific Gas and Electric Company (PG&E) filed Advice Letter (AL) 3795-E on January 26, 2011, requesting California Public Utilities Commission

(Commission) approval of a third amendment to the power purchase agreement (PPA) with Arlington Wind Project, LLC (Arlington Wind). The original Arlington Wind PPA was previously approved by the Commission in Resolution E-4204 on November 21, 2008.

The third amendment to the Arlington Wind PPA concerns the Rattlesnake Road Wind facility (Rattlesnake Road facility) located in Gilliam County, Oregon. The Rattlesnake Road facility interconnects in the Bonneville Power Administration's (BPA) control area, and has a contracted capacity of 103 megawatts (MW). The Rattlesnake Road facility is contracted to generate approximately 240 gigawatt-hours (GWh) of RPS-eligible energy annually over a 15-year contract term with PG&E, which began on January 1, 2009.

The third amendment to the Arlington Wind PPA amends the original Arlington Wind PPA to establish updated terms and conditions related to the BPA's wind integration charge (WIC). Under its Tariff, BPA assesses a WIC on wind generators in its Control Area for firming and shaping intermittent energy. The original Arlington Wind PPA included a provision specifying how the charge would be paid for. However, due to an increase in BPA's WIC in December 2010, the parties have re-negotiated the PPA terms to increase the original Arlington Wind PPA price so that PG&E can continue to receive RPS-eligible deliveries from the Rattlesnake Road facility.

This resolution approves cost recovery for the third amendment to the Arlington Wind PPA between PG&E and Arlington Wind Project, LLC without modifications. PG&E's execution of this amended PPA is consistent with PG&E's 2009 RPS Procurement Plan as approved in Decision 09-06-018. Approving the third amendment to the PPA will provide sufficient revenues for the Rattlesnake Road facility to continue operation and will retain existing RPS-eligible capacity in PG&E's portfolio. Deliveries under the Arlington Wind PPA are reasonably priced and fully recoverable in rates over the life of the PPA, subject to Commission review of PG&E's administration of the PPA. Upon Commission approval of the Amended PPA, PG&E will pay Arlington Wind Project, LLC their allocation of any of the WIC charges incurred since the December 2010 WIC increase.

PG&E responded to a safety data request and stated that Oregon Occupational Safety and Health Division (OSHA) is the government agency that regulates workplace safety and health at the Rattlesnake Road facility.

The following table provides a summary of the third amendment to the Arlington Wind PPA:

<b>Generating facility</b>	<b>Type</b>	<b>Term Years</b>	<b>MW Capacity</b>	<b>GWh Energy</b>	<b>Online Date</b>	<b>Location</b>
Rattlesnake Road Wind	Existing Wind Facility	15 years starting 1/5/2009	103	240	12/26/08	Gilliam County, Oregon

## **BACKGROUND**

### **Overview of the Renewables Portfolio Standard (RPS) Program**

The California RPS program was established by Senate Bill (SB) 1078, and has been subsequently modified by SB 107, SB 1036, and SB 2 (1X).<sup>1</sup> The RPS program is codified in Public Utilities Code Sections 399.11-399.31.<sup>2</sup> Under SB 2 (1X), the RPS program administered by the Commission requires each retail seller to procure eligible renewable energy resources so that the amount of electricity generated from eligible renewable resources be an amount that equals an average of 20 percent of the total electricity sold to retail customers in California for compliance period 2011-2013; 25 percent of retail sales by December 31, 2016; and 33 percent of retail sales by December 31, 2020.<sup>3</sup>

Additional background information about the Commission's RPS Program, including links to relevant laws and Commission decisions, is available at <http://www.cpuc.ca.gov/PUC/energy/Renewables/overview.htm> and <http://www.cpuc.ca.gov/PUC/energy/Renewables/decisions.htm>.

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<sup>1</sup> SB 1078 (Sher, Chapter 516, Statutes of 2002); SB 107 (Simitian, Chapter 464, Statutes of 2006); SB 1036 (Perata, Chapter 685, Statutes of 2007); SB 2 (1X) (Simitian, Chapter 1, Statutes of 2011, First Extraordinary Session).

<sup>2</sup> All further references to sections refer to Public Utilities Code unless otherwise specified.

<sup>3</sup> Decision (D.)11-12-020 established a methodology to calculate procurement requirement quantities for the three different compliance periods set forth in Section 399.15 (2011-2013, 2014-2016, and 2017-2020).

## **NOTICE**

Notice of Advice Letter 3795-E was made by publication in the Commission's Daily Calendar. PG&E states that a copy of the Advice Letter was mailed and distributed in accordance with Section 3.14 of General Order 96-B.

## **PROTESTS**

Advice Letter 3795-E was timely protested by the Division of Ratepayer Advocates (DRA) on February 15, 2011. PG&E responded to this protest on March 2, 2011.

DRA recommends that the Commission deny cost recovery for the third amendment to the Arlington Wind PPA on the following grounds: 1) there is no requirement to renegotiate the PPA terms under the current contract, 2) the amendment provides no ratepayer benefits over the current contract, and 3) the advice letter provides no open book examination of Arlington's operation to justify the PPA price increase.

PG&E believes the Commission should reject the DRA protest and approve the third amendment to the Arlington Wind PPA for the following four reasons: 1) ensuring continued deliveries necessitated renegotiating the PPA; 2) amending the PPA allows for continued delivery of RPS-eligible energy; 3) the Advice Letter provides cash flow impacts resulting from the third amendment; and 4) the third amendment is competitive with the 2009 RPS solicitation.

## **DISCUSSION**

**Pacific Gas and Electric Company requests approval of a third amendment to a power purchase agreement between Arlington Wind Project, LLC and PG&E.**

On January 26, 2011, PG&E filed AL 3795-E requesting Commission approval of a third amendment to the PPA with Arlington Wind Project, LLC. The Commission approved the original Arlington Wind PPA in Resolution E-4204 on November 21, 2008. The 103 MW Rattlesnake Road Wind Facility (Rattlesnake Road Facility) approved in the original Arlington Wind PPA is contracted to deliver estimated annual generation of 240 GWh to PG&E over a term of 15 years, which began on January 1, 2009.

The Rattlesnake Road facility is currently online and delivering RPS-eligible energy in Gilliam County, Oregon. The delivery structure of the PPA is set up so that Arlington Wind sells intermittent wind energy to the shaping provider,

Bonneville Power Administration (BPA). BPA then firms and shapes the intermittent wind energy into firm energy that is sold back to Arlington Wind. After Arlington Wind buys the firm energy, it then delivers energy and the associated green attributes to PG&E at the California-Oregon Border (COB). In December, 2010, BPA raised their Wind Integration Charge (WIC) for intermittent resources. Due to this this increased charge, PG&E was required to renegotiate the PPA with Arlington Wind in order to avoid contract termination. As a result, the two parties executed the third amendment to the Arlington Wind PPA on December 1, 2010 that includes:

1. An increase in contract price to reflect the increased WIC;
2. Updated contract standard terms and conditions regarding the WIC

**PG&E requests that the Commission issue a resolution that:**

1. Approves the PPA as amended by the Third Amendment in its entirety, including payments to be made by PG&E pursuant to the PPA as amended by the Third Amendment, subject to the Commission's review of PG&E's administration of the PPA as amended by the Third Amendment.
2. Finds that any procurement pursuant to the PPA as amended by the Third Amendment is procurement from eligible renewable energy resources for purposes of determining PG&E's compliance with any obligation that it may have to procure eligible renewable energy resources pursuant to the California Renewables Portfolio Standard (Public Utilities Code Section 399.11 et seq.) ("RPS"), Decision ("D.") 03-06-071 and D.06-10-050, or other applicable law.
3. Finds that all procurement and administrative costs, as provided by Public Utilities Code section 399.14(g), associated with the PPA as amended by the Third Amendment shall be recovered in rates.
4. Adopts the following finding of fact and conclusion of law in support of CPUC Approval:
  - a. The PPA as amended by the Third Amendment is consistent with PG&E's 2009 RPS procurement plan.
  - b. The terms of the PPA as amended by the Third Amendment, including the price of delivered energy, are reasonable.

5. Adopts the following finding of fact and conclusion of law in support of cost recovery for the PPA as amended by the Third Amendment:
  - a. The utility's costs under the PPA as amended by the Third Amendment shall be recovered through PG&E's Energy Resource Recovery Account.
  - b. Any stranded costs that may arise from the PPA as amended by the Third Amendment is subject to the provisions of D.04-12-048 that authorize recovery of stranded renewables procurement costs over the life of the contract. The implementation of the D.04-12-048 stranded cost recovery mechanism is addressed in D.08-09-012.
6. Adopts the following findings with respect to resource compliance with the Emissions Performance Standard ("EPS") adopted in R.06-04-009:
  - a. The PPA as amended by the Third Amendment is not covered procurement subject to the EPS because the generating facility has a capacity factor of less than 60 percent and, therefore, is not baseload generation under paragraphs 1(a)(ii) and 3(2)(a) of the Adopted Interim EPS Rules.

**Energy Division Evaluated the Global Amended PPAs on the following criteria:**

- Consistency with PG&E's 2009 RPS Procurement Plan
- Consistency with Least-Cost Best-Fit Requirements
- RPS Portfolio Need
- Price Reasonableness and Value
- Independent Evaluator (IE) Report
- Consistency with RPS Standard Terms and Conditions
- Consistency with Portfolio Content Categories Requirements
- Consistency with Long-Term Contracting Requirement
- Procurement Review Group Participation
- Compliance with the Interim Greenhouse Gas Emissions Performance Standard

### **Consistency with PG&E's 2009 RPS Procurement Plan**

California's RPS statute requires the Commission to direct each utility to prepare an annual RPS Procurement Plan (Plan) and then review and accept, modify, or reject the Plan prior to the commencement of a utility's annual RPS solicitation.<sup>4</sup> The Commission must then accept or reject proposed PPAs based on their consistency with the utility's approved Plan.

The third amendment to the Arlington Wind PPA was executed on December 1, 2010. At the time the third amendment was executed, the most recent Commission-approved Plan was PG&E's 2009 Plan, which was conditionally approved in D.09-06-018. Pursuant to statute, PG&E's Plan includes an assessment of supply and demand to determine the optimal mix of renewable generation resources, consideration of flexible compliance mechanisms established by the Commission, and a bid solicitation protocol setting forth the need for renewable generation of various operational characteristics.<sup>5</sup>

In its 2009 Plan, PG&E's goal was to procure approximately one to two percent of its retail sales volume, or between 800 to 1,600 GWh per year. The Rattlesnake Road facility is contracted to deliver approximately 240 GWh per year for a term of 15 years. Deliveries from the third amendment to the Arlington Wind PPA meet the criteria for renewables procurement contained in PG&E's 2009 Plan.

The third amendment to the Arlington Wind PPA is consistent with PG&E's 2009 RPS Procurement Plan approved by D.09-06-018.

### **Consistency with PG&E's Least-Cost Best-Fit (LCBF) Requirements**

The basic components of PG&E's LCBF evaluation and selection criteria and process for RPS PPAs were established in the Commission's LCBF Decisions D.03-06-071 and D.04-07-029. Consistent with these decisions, the four main LCBF evaluation steps undertaken by PG&E are:

1. Determination of market value of bid;
2. Calculation of transmission adders and integration costs;

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<sup>4</sup> Pub. Util. Code, § 399.14

<sup>5</sup> Pub. Util. Code, §399.14(a)(3)

3. Evaluation of portfolio fit; and
4. Consideration of non-price factors.

The LCBF decision directs the utilities to use certain criteria in their bid selection.<sup>6</sup> The decision offers guidance regarding the process by which the utility ranks bids in order to select or “shortlist” the bids with which it will commence negotiations.

The third amendment to the Arlington Wind PPA was executed on December 1, 2010 and submitted for Commission approval on January 26, 2011. As a result, PG&E examined the reasonableness of the third amendment to Arlington Wind PPA using the same LCBF methodology that they used for assessing RPS transactions received in the 2009 RPS Solicitation and for RPS contracts executed by PG&E during the 12 months prior to the execution of the third amendment to the Arlington Wind PPA. When compared against these cohorts, the third amendment to the Arlington Wind PPA compares favorably for price, value, viability, and need. See Confidential Appendix A for more details.

PG&E adequately examined the reasonableness of the third amendment to the Arlington Wind PPA utilizing its LCBF methodology that was in place during the time that the PPA was being negotiated and executed.

### **RPS Portfolio Need**

The California RPS Program was established by Senate Bill (SB) 1078 and has been recently modified by SB 2 (1X), which became effective on December 10, 2011. SB 2 (1X) made significant changes to the RPS Program.<sup>7</sup> SB2 (1X) established new RPS procurement targets such that retail sellers must procure “...from January 1, 2011 to December 31, 2013...an average of 20 percent of retail sales...25 percent of retail sales by December 31, 2016, and 33 percent of retail sales by December 31, 2020.”<sup>8</sup>

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<sup>6</sup> See D.04-07-029

<sup>7</sup> The Commission opened Rulemaking (R.) 11-05-005 (May 5, 2011) to implement the new RPS law.

<sup>8</sup> See § 399.15(b)(2)(B), SB 2 (1X).



Since the Rattlesnake Road facility began delivering in January 2009, the Arlington Wind PPA has delivered RPS-eligible energy which has contributed to PG&E maintaining compliance with its RPS goals. *Additionally, contracted volumes from the Rattlesnake Road facility are included in PG&E's current Renewable Net Short calculation and PG&E asserts that future RPS deliveries from the Rattlesnake Road facility fit into PG&E's future RPS portfolio need.* Any excess RPS deliveries from the Rattlesnake Road facility may be banked for PG&E to use in future compliance periods.

The Commission disagrees with DRA's concern that the third amendment to the Arlington Wind PPA facility provides no ratepayer benefit over the current contract. The third amendment to the Arlington Wind PPA will allow the Rattlesnake Road facility to continue providing PG&E with delivery of firmed and shaped RPS-eligible generation in both the near-term and long-term from an already-operating facility. The Commission denies DRA's protest on this basis.

The Commission finds that generation from the Rattlesnake Road facility fits the portfolio need requirements of PG&E's RPS portfolio.

### **Price Reasonableness and Value**

The original Arlington Wind PPA was approved by the Commission in Resolution E-4204 on November 21, 2008. The Rattlesnake Road facility began RPS-eligible deliveries to PG&E on January 5, 2009. The price approved in the original Arlington Wind PPA was \$96.81/MWh for the generation delivered to the delivery point in each Contract Year. However, the \$96.81/MWh PPA price doesn't include the cost of firming and shaping services and possible price adjustments, which equate to a maximum PPA price of \$103.31. Please see table 1 for a break-down of the original Arlington Wind PPA costs.

<b>Table 1: Original Arlington Wind PPA Pricing Components (\$/MWh)</b>	
Base Price	76.75
Firming and Shaping	20.06
COB/Mid-C Spread <sup>9</sup>	2.00
BPA Wind Integration Charges	4.50
Maximum PPA Price	103.31

The original Arlington Wind PPA set a WIC cap at \$6.00/MWh which translated into an annual termination threshold of \$1,400,000.<sup>10,11</sup> The original Arlington Wind PPA allocated \$4.50/MWh of the \$6.00/MWh WIC charge to PG&E. Please see Table 2 for a break-down of the WIC cost-sharing agreement between PG&E and the Developer in the Original Arlington Wind PPA.

<b>Table 2: Original Arlington Wind PPA WIC Cost Sharing Components (\$/MWh)</b>		
	<b>PG&amp;E</b>	<b>Developer (Horizon Arlington)</b>
First \$720,000/yr. (\$3.00/MWh)	3.00	
Next \$720,000/yr. (\$3.00/MWh)	1.50	1.50
Total Cost-Sharing Allocation of \$1,440,000/yr. (\$6.00/MWh)	4.50	1.50

The third amendment to the Arlington Wind PPA raises the annual WIC cap in the PPA, and thus raises PG&E's share of the WIC payment from the

<sup>9</sup> The PPA's all-in contract price is subject to a one-time adjustment to account for a change in the Mid-C COB (California-Oregon Border) energy price. Specifically, the contract price may be adjusted, positive or negative, not in excess of \$2.00/MWh, to reflect a change in COB Mid-C spread as determined at the time of contract execution and the date when non-appealable CPUC-approval is received.

<sup>10</sup> To the extent that the BPA's wind integration charge are less than the PPA's limit, the Arlington Wind PPA price will be less than this maximum.

<sup>11</sup> The PPA's dollar thresholds (used to convert the annual WIC cost cap into a cost/MWh) were developed on the assumption that the project would generate approximately 240 GWh/year.

\$4.50/MWh cap in the original PPA. The third amendment to the Arlington Wind PPA was executed on December 1, 2010 and submitted for Commission approval on January 26, 2011. As a result, the most recent cohorts to compare the third amendment to the Arlington Wind PPA's price and value against are shortlisted bids from PG&E's 2009 RPS solicitation and RPS contracts executed by PG&E during the 12 months prior to the execution of the third amendment to the Arlington Wind PPA.

PG&E evaluated the attributes of each PPA bid from the 2009 RPS solicitation both quantitatively and qualitatively in order to rank each bid for their shortlist based on Net Market Value (NMV). The third amendment to the Arlington Wind PPA compared favorably against other offers based on price, value, and viability using the NMV methodology. See Confidential Appendix A for a price and value comparison.

The price and net market value of the third amendment to the Arlington Wind PPA are reasonable compared to shortlisted projects resulting from PG&E's 2009 RPS solicitation and RPS contracts recently executed by PG&E.

The CPUC approves cost recovery for the third amendment to the Arlington Wind PPA between PG&E and Arlington Wind Project, LLC.

### **Independent Evaluator (IE) Report**

The Independent Evaluator, Sedway Consulting (Sedway), which also evaluated the original Arlington Wind PPA in its August 7, 2008 IE report, evaluated the third amendment to the Arlington Wind PPA. Sedway compared the NMV of the third amendment to the Arlington Wind PPA to peer groups of previously and currently offered competing sources of RPS-eligible energy using Sedway's proprietary NMV evaluation model. Based on those comparisons, Sedway opines that the third amendment to the Arlington Wind PPA compares favorably for price and NMV to relevant peer groups of competing proposals. See Confidential Appendix B for a detailed explanation of the IE's findings.

Consistent with D.06-05-039, an independent evaluator oversaw PG&E's RPS procurement process. Additionally, an independent evaluator oversaw PG&E's negotiations with Arlington Wind Project, LLC and compared the costs, value and viability of the third amendment to the Arlington Wind PPA to peer groups consisting of alternative competing proposals currently or recently available to PG&E.

The independent evaluator recommends that the Commission approve the third amendment to the Arlington Wind PPA.

### **Consistency with RPS Standard Terms and Conditions**

The Commission adopted a set of standard terms and conditions (STCs) required in RPS contracts, four of which are considered “non-modifiable.” The STCs were compiled in D.08-04-009 and subsequently amended in D.08-08-028. More recently in D.10-03-021, as modified by D.11-01-025, the Commission further refined these STCs.

The third amendment to the Arlington Wind PPA amends PG&E’s original PPA with Arlington Wind Project, LLC only to the extent necessary to establish updated terms and conditions related to the BPA WIC. As a result, the standard terms and conditions in the original PPA were not changed substantively by the third amendment.

The third amendment to the Arlington Wind PPA includes the Commission-adopted RPS “non-modifiable” standard terms and conditions, as set forth in D.08-04-009, D.08-08-028, and D.10-03-021, as modified by D.11-01-025.

### **Consistency with Portfolio Content Category Requirements**

In D.11-12-052, the Commission defined and implemented portfolio content categories for the RPS program and authorized the Director of Energy Division to require the investor-owned utilities to provide information regarding the proposed contract’s portfolio content category classification in each advice letter seeking Commission approval of an RPS contract. The purpose of the information is to allow the Commission to evaluate the claimed portfolio content category of the proposed RPS PPA and the risks and value to ratepayers if the proposed PPA ultimately results in renewable energy credits in another portfolio content category.

In response to a data request for AL 3795-E, PG&E asserted that portfolio content categories do not apply to the Third Amendment to the Arlington Wind PPA. PG&E argues that the third amendment to the Arlington Wind PPA is exempt from the D.11-12-052 categorization requirements for post-June 1, 2010 RPS procurement (“Grandfathered Procurement”)<sup>12</sup> because the original Arlington Wind PPA was executed prior to June 1, 2010. To support its assertion, PG&E notes that: (i) the renewable energy resource was eligible under the rules in place

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<sup>12</sup>Pub. Util. Code, § 399.16(d)

at the time of execution of the original Arlington Wind PPA; (ii) the original Arlington Wind PPA was approved by the Commission by Resolution E-4204; and (iii) the third amendment to the Arlington Wind PPA does not increase the nameplate capacity or expected quantities of annual generation, or substitute a different renewable energy resource.

Consistent with D.11-12-052, PG&E provided information in AL 3795-E regarding the expected portfolio content category classification of the renewable energy credits to be procured pursuant to the third amendment to the Arlington Wind PPA.

### **Consistency with Long-Term Contracting Requirement**

In D.12-06-038, the Commission established a long-term contracting requirement that must be met in order for retail sellers to count RPS procurement from contracts less than 10 years in duration for compliance with the RPS program.<sup>13</sup> In order for the procurement from any short-term contract(s) signed after June 1, 2010 to count for RPS compliance, the retail seller must execute long-term contract(s) in the same compliance period in which the short-term contract(s) is signed. The volume of expected generation in the long-term contract(s) must be sufficient to cover the volume of generation from the short-term contract(s).<sup>14</sup>

Because the third amendment to the Arlington Wind PPA is considered greater than 10 years in length, the PPA may be construed as counting toward the minimum quantity requirements that the Commission established in D.12-06-038.

### **Procurement Review Group Participation**

The Procurement Review Group (PRG) process was initially established in D.02-08-071 to review and assess the details of the investor-owned utilities' overall procurement strategy, solicitations, specific proposed procurement

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<sup>13</sup> For the purposes of the long-term contracting requirement, contracts of less than 10 years duration are considered "short-term" contracts. (D.12-06-038)

<sup>14</sup> Pursuant to D.12-06-038, the methodology setting the long-term contracting requirement is: 0.25% of Total Retail Sales in 2010 for the first compliance period; 0.25% of Total Retail Sales in 2011-2013 for the second compliance period; and 0.25% of Total Retail Sales in 2014-2016 for the third compliance period.

contracts and other procurement processes prior to submitting filings to the Commission as a mechanism for procurement review by non-market participants.

According to PG&E, participants in its PRG included representatives from the Commission's Energy Division and the Division of Ratepayer Advocates, the Department of Water Resources, the Union of Concerned Scientists, the Utility Reform Network, the California Utility Employees, and Jan Reid, as a PG&E ratepayer. The third amendment to the Arlington Wind PPA was presented to the PRG as a potential contract for execution on August 13, 2010.

Pursuant to D.02-08-071, PG&E complied with the Commission's rules for involving the Procurement Review Group.

### **Compliance with the Interim Greenhouse Gas Emissions Performance Standard (EPS)**

California Public Utilities Code Sections 8340 and 8341 require the Commission to consider emissions associated with new long-term (five years or greater) PPAs procured on behalf of California ratepayers.

D.07-01-039 adopted an interim EPS that establishes an emission rate for obligated facilities at levels no greater than the greenhouse gas (GHG) emissions of a combined-cycle gas turbine power plant. The EPS applies to all energy PPAs for baseload generation that are at least five years in duration.<sup>15</sup> Generating facilities using certain renewable resources, including geothermal energy, are deemed compliant with the EPS.<sup>16</sup>

The Rattlesnake Road facility is not baseload generation and therefore the Emissions Performance Standard does not apply to this PPA.

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<sup>15</sup> "Baseload generation" is electricity generation at a power plant "designed and intended to provide electricity at an annualized plant capacity factor of at least 60%." Pub. Util. Code § 8340 (a).

<sup>16</sup> D.07-01-039, Attachment 7, p. 4

## **RPS ELIGIBILITY AND CPUC APPROVAL**

Pursuant to Public Utilities Code Section 399.13, the CEC certifies eligible renewable energy resources. Generation from a resource that is not CEC-certified cannot be used to meet RPS requirements. To ensure that only CEC-certified energy is procured under a Commission-approved RPS PPA, the Commission has required standard and non-modifiable “eligibility” language in all RPS PPAs. That language requires a seller to warrant that the project qualifies and is certified by the CEC as an “Eligible Renewable Energy Resource,” that the project’s output delivered to the buyer qualifies under the requirements of the California RPS, and that the seller uses commercially reasonable efforts to maintain eligibility should there be a change in law affecting eligibility.<sup>17</sup>

The Commission requires a standard and non-modifiable clause in all RPS PPAs that requires “CPUC Approval” of a PPA to include an explicit finding that “any procurement pursuant to this Agreement is procurement from an eligible renewable energy resource for purposes of determining Buyer's compliance with any obligation that it may have to procure eligible renewable energy resources pursuant to the California Renewables Portfolio Standard (Public Utilities Code Section 399.11 et seq.), D.11-12-020 and D.11-12-052, or other applicable law.”<sup>18</sup>

Notwithstanding this language, the Commission has no jurisdiction to determine whether a project is not an eligible renewable energy resource, nor can the Commission determine prior to final CEC certification of a project, that “any procurement” pursuant to a specific contract will be “procurement from an eligible renewable energy resource.”

Therefore, while we include the required finding here, this finding has never been intended, and shall not be read now, to allow the generation from a non-RPS-eligible resource to count towards an RPS compliance obligation. Nor shall such finding absolve the seller of its obligation to obtain CEC certification, or the utility of its obligation to pursue remedies for breach of contract. Such contract enforcement activities shall be reviewed pursuant to the Commission’s authority to review the utilities’ administration of such contracts.

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<sup>17</sup> See, e.g. D. 08-04-009 at Appendix A, STC 6, Eligibility.

<sup>18</sup> See, e.g. D. 08-04-009 at Appendix A, STC 1, CPUC Approval.

### **CONFIDENTIAL INFORMATION**

The Commission, in implementing Public Utilities Code Section 454.5(g), has determined in D.06-06-066, as modified by D.07-05-032, that certain material submitted to the Commission as confidential should be kept confidential to ensure that market sensitive data does not influence the behavior of bidders in future RPS solicitations. D.06-06-066 adopted a time limit on the confidentiality of specific terms in RPS PPAs. Such information, including price, is confidential for three years from the date the contract states that energy deliveries begin, except contracts between IOUs and their affiliates, which are public. In this case, the original Arlington Wind PPA is already public information due to its January 5, 2009 COD; however, confidential information from the third amendment to the Arlington Wind PPA will not become public until 3 years after the effective date of this resolution.

The confidential appendices, marked “[REDACTED]” in the public copy of this resolution, as well as the confidential portions of the advice letter, should remain confidential at this time.

### **COMMENTS**

Public Utilities Code section 311(g)(1) provides that this resolution must be served on all parties and subject to at least 30 days public review and comment prior to a vote of the Commission. Section 311(g)(2) provides that this 30-day period may be reduced or waived upon the stipulation of all parties in the proceeding.

The 30-day comment period for the draft of this resolution was neither waived nor reduced. Accordingly, this draft resolution was mailed to parties for comments on May 28, 2013 and comments were received from The Division of Ratepayer Advocates (DRA) on June 17, 2013.

We carefully considered comments which focused on factual, legal, or technical errors and made appropriate changes to the draft resolution.

### **DRA recommends that the Commission reject the Third Amendment to the Arlington Wind PPA.**

DRA recommends that the Commission reject the Third Amendment to the Arlington Wind PPA for three reasons: 1) the Third Amendment to the Arlington Wind PPA raises the price of the contract, but provides no additional ratepayer benefits over the current contract; 2) the price increase in the Third Amendment to the Arlington Wind PPA is not competitive when compared to PG&E's most



recent RPS shortlist; and 3) the RPS generation from the Rattlesnake Road facility is unnecessary since PG&E is already projected to have met its RPS compliance obligations through 2022.

As stated above, this resolution approves the Third Amendment to the Arlington Wind PPA. The Third Amendment to the Arlington Wind PPA maintains a significant ratepayer benefit by ensuring current and future RPS deliveries from a fully viable, online, and delivering RPS facility. Additionally, Energy Division believes that the 2010 shortlist is the appropriate cohort to compare the Third Amendment to the Arlington PPA against since it was the most recent Commission-approved shortlist at the time of the amendment's execution on December 1, 2010. Finally, Energy Division believes the RPS deliveries from the Rattlesnake Road facility provide value to PG&E since PG&E plans to use the energy for RPS compliance in both the near- and long-term<sup>19</sup>. Furthermore, if RPS deliveries from the Rattlesnake Road facility are ultimately classified such that it meets the PCC conditions set forth in Pub. Util. Code § 399.16(d) as PG&E claims,<sup>20</sup> then deliveries from the Rattlesnake Road facility have additional compliance value.

## **FINDINGS AND CONCLUSIONS**

1. The third amendment to the Arlington Wind PPA is consistent with PG&E's 2009 RPS Procurement Plan approved by D.09-06-018.

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<sup>19</sup> See PG&E's 2011 Preliminary Annual 33% RPS Compliance Report

<sup>20</sup> The conditions set forth in Pub. Util. Code § 399.16(d) are:

1. The renewable energy resource was eligible under the rules in place as of the date when the contract was executed.
2. For an electrical corporation, the contract has been approved by the commission, even if that approval occurs after June 1, 2010.
3. Any contract amendments or modifications occurring after June 1, 2010, do not increase the nameplate capacity or expected quantities of annual generation, or substitute a different renewable energy resource. The duration of the contract may be extended if the original contract specified a procurement commitment of 15 or more years.

2. PG&E adequately examined the reasonableness of the third amendment to the Arlington Wind PPA utilizing its LCBF methodology during the time the PPA was being negotiated and executed.
3. Generation from the Rattlesnake Road facility fits the portfolio need requirements of PG&E's RPS portfolio.
4. The price and net market value of the third amendment to the Arlington Wind PPA are reasonable compared to shortlisted projects resulting from PG&E's 2009 RPS Solicitation and RPS contracts recently executed by PG&E.
5. The Division of Ratepayer Advocates' protest should be denied.
6. Consistent with D.06-05-039, an independent evaluator oversaw PG&E's RPS procurement process. Additionally, an independent evaluator oversaw PG&E's negotiations with Arlington Wind Project, LLC and compared the costs, value and viability of the third amendment to the Arlington Wind PPA to peer groups consisting of alternative competing proposals currently or recently available to PG&E.
7. The third amendment to the Arlington Wind PPA includes the Commission-adopted RPS "non-modifiable" standard terms and conditions, as set forth in D.08-04-009, D.08-08-028, and D.10-03-021, as modified by D.11-01-025.
8. Consistent with D.11-12-052, PG&E provided information in AL 3795-E regarding the expected portfolio content category classification of the renewable energy credits to be procured pursuant to the third amendment to the Arlington Wind PPA.
9. Because the third amendment to the Arlington Wind PPA is considered greater than 10 years in length, the PPA may be construed as counting toward the minimum quantity requirements that the Commission established in D.12-06-038.
10. Pursuant to D.02-08-071, PG&E complied with the Commission's rules for involving the Procurement Review Group.
11. The Rattlesnake Road facility is not baseload generation and therefore the Emissions Performance Standard does not apply to this PPA.
12. Procurement pursuant to the third amendment to the Arlington Wind PPA is procurement from an eligible renewable energy resource for purposes of determining PG&E's compliance with any obligation that it may have to

procure eligible renewable energy resources pursuant to the California Renewables Portfolio Standard (Public Utilities Code Section 399.11 et seq.), D.11-12-020 and D.11-12-052, or other applicable law.

13. The immediately preceding finding shall not be read to allow generation from a non-RPS eligible renewable energy resource under the PPA to count towards an RPS compliance obligation. Nor shall that finding absolve PG&E of its obligation to enforce compliance with the third amendment to the Arlington Wind PPA.
14. The confidential appendices, marked “[REDACTED]” in the public copy of this resolution, as well as the confidential portions of the advice letter, should remain confidential at this time.
15. The third amendment to the Arlington Wind PPA should be approved in its entirety.
16. Advice Letter 3795-E should be approved effective today without modifications.
17. Payments made by PG&E under the third amendment to the Arlington Wind PPA are fully recoverable in rates over the life of the PPA, subject to Commission review of PG&E’s administration of the PPA.

**THEREFORE IT IS ORDERED THAT:**

1. The third amendment to the power purchase agreement between Pacific Gas and Electric Company and Arlington Wind Project, LLC as proposed in Advice Letter 3795-E is approved without modifications.

This Resolution is effective today.

I certify that the foregoing resolution was duly introduced, passed and adopted at a conference of the Public Utilities Commission of the State of California held on June 27, 2013; the following Commissioners voting favorably thereon:

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Paul Clanon  
Executive Director

## **Confidential Appendix A**

Price/Value Reasonableness, Need, and Viability

[REDACTED]

## **Confidential Appendix B**

### Independent Evaluator Conclusions and Recommendations

[REDACTED]

## **Confidential Appendix C**

### Third Amendment to Arlington Wind PPA Major Contract Provisions

[REDACTED]